

**REMARKS**

Claims 1-8, 10, 14-23, 25, 29-35 and 40-47 are pending in the application.

Claims 1-8, 10, 14-23, 25, 29-35 and 40-47 have been rejected.

Claims 1, 6, 16, 21, 31 and 35 have been amended as set forth herein.

Claims 7 and 22 are canceled herein without prejudice.

Claims 1-6, 8, 10, 14-21, 23, 25, 29-35 and 40-47 remain pending in this application.

Reconsideration of the claims is respectfully requested.

**I. CLAIM REJECTIONS -- 35 U.S.C. § 102**

Claims 1-3, 5-7, 14-18, 20-22, 29-32, 34, 35 and 40-47 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2002/0146983 to *Scherzer, et al.*, hereinafter “Scherzer ‘983”. This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131, p. 2100-76 (8th ed., rev. 4, October 2005) (*citing In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. *Id.* (*citing Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

Initially, the Applicants respectfully submit that the cancellation of Claims 7 and 22 render the rejection of those claims moot.

Amended independent Claim 1 recites a base station that includes a transceiver that receives multiple power control signals from a mobile station during a beam update time, where each power control signal requests the base station to either increase or decrease the power of a traffic signal. The Applicants respectfully submit that Scherzer '983 does not describe such a base station.

In rejecting Claim 1, the Examiner asserted that Scherzer '983 describes a base station including a transceiver that receives multiple power control signals from a mobile station during a beam update time at page 9, paragraph [0078], citing the passage "measuring a current beam configuration link, selecting another beam configuration, measuring the selected beam configuration link, and comparing the current and selected beam configuration results," and explaining "*i.e., differential calculations.*" See *Office Action mailed December 22, 2008, Section 5, page 3, second paragraph.*

The Applicants respectfully submit that neither the cited paragraph nor any other portion of Scherzer '983 describes a base station receiving requests from a mobile station to increase or decrease the power of a traffic signal transmitted by the base station, as recited in amended Claim 1. As a result, neither can Scherzer '983 describe the base station either calculating a differential power control that corresponds to two or more of such mobile station requests, or forming a downlink traffic beam with a beam width set as a function of the differential power control.

For at least these reasons, amended independent Claim 1 is patentable over the cited reference. Amended independent Claims 16 and 31 recite limitations analogous to the novel and non-obvious limitations emphasized in traversing the rejection of Claim 1 and, therefore, also are patentable over the cited reference. Claims 2, 3, 5, 6, 14, 15, 42 and 43 depend from Claim 1, Claims 17, 18, 20, 21, 29, 30, 44 and 45 depend from Claim 16, Claims 32, 34, 35, 40, 41, 46 and 47 depend from Claim 31, and each includes all the limitations of its respective base claims. As such, Claims 2, 3, 5, 6, 14, 15, 17, 18, 20, 21, 29, 30, 32, 34, 35 and 40-47 also are patentable over the cited reference.

Accordingly, the Applicants respectfully request that the Examiner withdraw the § 102 rejection with respect to Claims 1- 3, 5, 6, 14-18, 20, 21, 29-32, 34, 35 and 40-47.

## **II. CLAIM REJECTIONS -- 35 U.S.C. § 103**

Claims 4, 19 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scherzer reference in view of U.S. Patent No. 6,895,258 to *Scherzer, et al.*, hereinafter “Scherzer ‘258”. Claims 8 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scherzer reference in view of U.S. Patent No. 6,148,208 to *Love*, hereinafter “Love”. Claims 10 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scherzer reference in view of U.S. Patent No. 7,054,662 to *Judson*, hereinafter “Judson”. The Applicants respectfully traverse the rejections.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. rev. 4, October 2005). Absent such a *prima facie* case, the applicants are under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants' disclosure. *Id.*

As argued in traversing the § 102 rejection of independent Claims 1, 16 and 31, Scherzer does not describe all the limitations of Claims 1, 16 and 31. The Applicants respectfully submit that Scherzer '258, Love and Judson do nothing to overcome the shortcomings of Scherzer '983. Claims 4, 8 and 10 depend from Claim 1, Claims 19, 23 and 25 depend from Claim 16, Claim 33 depends from Claim 31, and each includes all the limitations of its respective base claim. Therefore, Claims 4, 8, 10, 19, 23, 25 and 33 are patentable over the cited references.

Accordingly, the Applicants respectfully request that the Examiner withdraw the § 103 rejections with respect to Claims 4, 8, 10, 19, 23, 25 and 33.

**CONCLUSION**

As a result of the foregoing, the Applicants assert that the remaining claims in the Application are in condition for allowance, and respectfully requests an early allowance of such claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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